

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-2125

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SALVATORE JAMES RAFFONE,

Petitioner-Plaintiff-Appellant,

-against-

SGT. DANIEL SULLIVAN, Milford Police
Department, GOVERNOR ELLA T. GRASSO,
State of Connecticut, GOVERNOR ASKEW,
State of Florida,

Respondents-Defendants-Appellees.

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DOCKET NO.
77-2125

On Appeal from the United States District Court
for the District of Connecticut

BRIEF FOR APPELLEE

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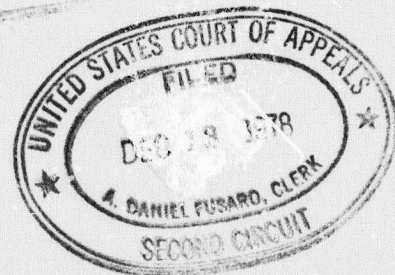


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I. STATEMENT OF ISSUE

Does an action for damages pursuant to 42 U.S.C. §1983 lie when a fugitive claims that he was removed from the asylum state to the demanding state while extradition proceedings were pending in the asylum state?

II. STATEMENT OF THE CASE

The respondent-appellee Grasso agrees with the statement of the case presented by the petitioner-appellant.

III. STATEMENT OF FACTS

The facts relied upon by Judge Newman are stated in Raffone v. Sullivan, 436 F. Supp. 939 (D. Conn. 1977). In dismissing the complaint, Judge Newman assumed the petitioner-appellant "was illegally abducted from the state of Florida and brought to Connecticut to stand trial while he was in the process of fighting extradition from Florida to Connecticut. He was subsequently convicted in Coknecticut and is now incarcerated here The most the complaint alleges is that plain-

tiff was taken into custody on the extradition warrant and transferred to the custody of Connecticut officials before he had exhausted his statutory challenges to extradition. The proceedings, though irregular if the allegations of the complaint are accepted as true, lack 'any allegation of that complex of shocking governmental conduct sufficient to convert an abduction which is simply illegal into one which sinks to a violation of due process.'" (citations omitted) Raffone v. Sullivan, supra, 940, 941.

The appellant elaborates the facts, as alleged, but nothing in his brief is inconsistent with the language of Judge Newman. The gravamen of the complaint is that an "abduction" which fails to comply with procedural requirements of the asylum state suffices to state a cause of action for damages, regardless of whether governmental action is shocking or outrageous.

IV. ARGUMENT

A. Regardless of the Determination of the Appeal on the Merits, the Action as to Governor Grasso Should Be Dismissed.

The appellee Ella T. Grasso moved for dismissal of the suit and for judgment as to her. (Doc. 32) While several grounds were urged, id., the primary ground was that she had

absolutely nothing to do with the allegedly illegal abduction, and that, therefore, she could not be held liable for any damages. See Johnson v. Glick, 481 F.2d 1028, 1034 (2d Cir. 1973); Hopkins v. Hall, 372 F. Supp. 182, 183 (E.D. Okl. 1974); Vangerganden v. Lowell School District No. 71, 369 F. Supp. 67, 74-75 (D. Ore. 1973); Ashenhurst v. Carey, 351 F. Supp. 708, 713 (N.D. Ill. 1972); Andrews v. Murphy, 349 F.2d 114 (6th Cir. 1965). The doctrine of respondent superior does not apply to §1983 actions. Bracey v. Grenoble, 494 F.2d 566, 569-71 (3d Cir. 1974); Ashenhurst v. Carey, supra; Furomoto v. Lyman, 362 F. Supp. 1267, 1275 n.8 (N.D. Calif. 1973); Mathis v. Pratt, 375 F. Supp. 301, 303 (N.D. Ill. 1974).

Governor Grasso suggests that even if the claim should be held to be actionable, it is not actionable as to her, as her sole role, as alleged in the complaints, was to sign extradition papers. There is no allegation that she did so illegally or that she violated the appellant's rights in any way.

B. Absent Extraordinary Circumstances, No Claim For Damages Exists Under 42 U.S.C. §1983 When the Claim Concerns Extradition.

In dismissing the complaint, the District Court, held on broad grounds that the complaint failed to state a

ground on which relief could be granted. Raffone v. Grasso, supra, 940. The general holding of the court was that absent shocking circumstances, violations of statutory requirements are not actionable under the Civil Rights Act. In reaching this conclusion, the District Court noted that there appeared to be a split of authority. One line of cases, understandably relied upon by the appellant in his brief to this court, holds that complaints alleging substantial noncompliance with statutory procedural requirements are at least not subject to dismissal. See, e.g., Wirth v. Surles, 562 F.2d 319 (4th Cir. 1977); Sanders v. Conine, 506 F.2d 530 (10th Cir. 1974). Another line, however, holds that such alleged deprivations are actionable. See e.g., Waits v. McGowan, 516 F.2d 203 (3d Cir. 1975); Hines v. Guthrey 342 F. Supp. 594 (W.D.Va. 1972); Johnson v. Buie, 312 F. Supp. 1349 (W.D. Mo. 1970). The District Court there examined the process of interstate extradition in order to determine whether statutory procedural violations involved a federal constitutional right.

Interstate extradition is grounded in the Constitution of the United States, Article 4 §2, cl.2. 18 U.S.C. §3182 requires that the executive authority of an asylum state turn over a fugitive to the demanding state upon proper proffering of an indictment or affidavit. The federal scheme, more in the nature of a treaty among the states than a statement of individual rights, has consistently been interpreted to impose duties upon the states to deliver fugitives. See Kentucky v. Dennison, 65 U.S. (24 How.)

66 (1860); Roberts v. Reilly, 116 U.S. 80 (1885); Appleyard v. Massachusetts, 203 U.S. 222 (1906); Smith v. Idaho, 373 F.2d 149 (9th Cir. 1967); see DeGenna v. Grasso, 413 F. Supp. 427 (D. Conn. 1976); aff'd sub. nom. Carino v. Grasso, 426 U.S. 913 (1976).

Federal law, then compels states to turn over fugitives from other states upon a showing of probable cause. Federal law does not that any particular procedures be followed; these are provided by the states. Both Florida and Connecticut, as well as most other states, have adopted the Uniform Criminal Extradition Act, which fills in the details.

The significant issue of course, is whether any allegations giving rise to a federal civil rights action have been made. As recognized by Judge Newman, the claim is made that Florida procedural statutes were violated. But there is absolutely no claim that provisions of federal constitutional or statutory law relating directly to extradition were violated in any way. As such, any claim under the Civil Rights Act must fall.

This is not to say, however, that every claim concerning extradition fails to state a federal cause of action. If conduct is totally outrageous, then relief could be granted. For example, in United States v. Toscanino, 500 F.2d 267 (2d

Cir. 1974), an eventual defendant was abducted by agents of the United States government from a foreign land in violation of a federal treaty; in addition, the defendant apparently had been abducted at gunpoint, was held incommunicado and deprived of food and water, and was tortured and interrogated. *Id.*, 269-70. This court, held that an evidentiary hearing on the claims were necessary; but, crucially, noted that it was the alleged violations of a federal treaty which were controlling and that the reasoning did not necessarily apply to state court cases. *Id.*, 276, 279.

In United States ex rel. Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975), this court distinguished Toscanino. In Lujan, the petitioner alleged a violation of the law, but he alleged no deprivation greater than that which would have occurred in the course of a lawful extradition. *Id.*, 66. In the absence of shocking conduct, which apparently includes torture, terror and interrogation, a petitioner may not complain. In Lujan, there was no objection to a possible violation of a treaty. See also United States v. Lira, 515 F.2d 68 (2d Cir. 1975).

Essentially, the District Court held in this case that not every violation of state procedural statutes amounts to a federal claim. Significantly, there is no allegation that there was insufficient probable cause for extradition; indeed, it is

alleged that the petitioner was tried and convicted in Connecticut. The federal standards were, therefore, met. Cases cited in pages 11-12 of the petitioner's brief are thus inappropos.

The petitioner finally attempts to draw a distinction between the Toscanino line of cases and the case at bar, as the former involves the validity of convictions and the latter an action for damages. The analogy, however, is inescapable: the issue is (a) whether federal law has been violated, and (b) whether due process has been violated. As neither has occurred in this case, Judge Newman's opinion ought to be affirmed.

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CERTIFICATION

This is to certify that on December 12, 1978, three copies of the foregoing were mailed to Torrey L. Whitman, Esq., One Chase Manhattan Plaza, New York, N.Y. 10005.

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